

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

FAO.No. 256 of 2007()

AGAINST THE ORDER DATED 02/08/2007 IN IA. 282 /2007 IN
OS.1/2007 of ADDL. DISTRICT COURT,ALAPPUZHA.

APPELLANT/PETITIONER/PLAINTIFF

MADHU MUTTOM, S/O.KUNJU PANICKER,
THERUVIL THEKKETHIL, MUTTOM P.O., HARIPPAD,
CHEPPAD VILLAGE, KARTHIKAPPALLY THALUK,
ALAPPUZHA.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS: RESPONDENTS/DEFENDANTS

1. FAZIL, AGED 52 YEARS,
FILM DIRECTOR, DAROOSALEM, NEAR LEO XIIIITH SCHOOL,
ALAPPUZHA, WEST VILLAGE, ALAPPUZHA.
2. APPACHAN, AGED 43 YEARS,
SARGACHITHRA, PANAKKAD VEEDU,
BANK ROAD, CALICUT-1.
3. PRIYADARSAN,
FILM DIRECTOR, 4TH FRAME, SOUND COMPANY,
NEW NO.6 (OLD NO.59), VEERABHADRAN STREET,
VALLUVARKOTTAM, CHENNAI-34.
4. SUPER CASSETTES INDUSTRIES LTD.,
GOLDEN CHARIOT STUDIO,
PLOT NO.B-14, NEW LINK ROAD, NEAR MONGINALS,
ANDHERI (W), MUMBAI-400053 REPRESENTED BY ITS
MANAGING DIRECTOR.

R1 & R3 BY ADV. SRI.KURIAN GEORGE KANNANTHANAM (SR)
SRI.TONY GEORGE KANNANTHANAM
R2 BY ADV. SRI.P.V.KUNHIKRISHNAN
R4 BY ADV.SRI.S.B.PREMACHANDRA PRABHU

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. PADMANABHAN NAIR ,J.

F.A.O.No.256 of 2007

Dated, this the 19th day of September, 2007

JUDGMENT

Appellant is the plaintiff in O.S.No.1/2007 on the file of the Additional District Court, Alappuzha. The suit was filed under the provisions of the Copy Right Act, 1957 (for short 'the Act') for a declaration and permanent prohibitory injunction. Along with the suit he filed application under Order XXXIX Rules 1 and 2 of Civil Procedure Code for an order of temporary injunction restraining the respondents from making/remaking/dubbing the story of the appellant in respect of the story of film “Manichithrathazhu” in Hindi or mutilating the same or releasing the film “Bhool bhulaiya”, video films or any such visual recording or publishing or exhibiting the same in any manner whatsoever so as to infringe the copy right of the story written by the appellant.

2. The material averments are as follows: The appellant is a literary artist mainly writing scripts and stories for Movies. He wrote a story, screenplay and dialogue for a Malayalam Movie by name 'Manichithrathazhu'. He has got absolute copy right over the said work written in the year 1993. First respondent agreed to make a film using the story, screenplay and dialogue as per agreement dated 28.7.1993 executed between him and the appellant. The said agreement was produced and marked as Ext.A1 in the suit. Appellant sold the story and

screenplay to the first respondent. According to the appellant right given to the first respondent under Ext.A1 agreement was only a licence within the meaning and scope of Section 30 of the Act and there was no assignment of copy right to the first respondent within the meaning of Section 14 of the Act. Subsequently the second respondent without the knowledge and consent of the appellant sold the right to take movies in Tamil and Telugu and at present he sold the same to the fourth respondent for producing a Hindi movie by name Bhool bhulaiya. Changes are made in the script and story which will have the effect of mutilating the story and hence the appellant was entitled to get an order of injunction.

3. First respondent contended that the suit is barred by the provisions of Order II Rule 2 of CPC. It was contended that the appellant has no copy right over the literary work and he was not the author of the literary work of Manichithrathazhu. It was also contended that he had only narrated the basic theme of the story. It was contended that the appellant had transferred whatever right he had to the first respondent for valuable consideration under Ext.A1 agreement dated 28.7.1993 and thereafter the appellant lost all his right over the story and he cannot make any claim for authorship right or copy right.

4. Second respondent contended that he has got absolute right over the story and screenplay under the Copy Right Act. It was contended that he sold that right to various producers to make film in different languages for valuable consideration. He maintained a stand that he has got every right to assign the copy

right as a producer. It was also contended that initially the appellant approached the second respondent with a theme of a film and second respondent directed the appellant to discuss the matter with the first respondent and thereafter the appellant wrote the story and sold the same to the first respondent. It was further contended that the appellant is not entitled to get any order of injunction.

5. Third respondent also raised a contention that the suit is hit by Order II Rule 2 of CPC and the appellant is having no right over the story and he is not the author of the story. It was specifically contended that the appellant transferred all his right to the first respondent for valuable consideration and thereafter he is having no copy right or authorship right over the film.

6. Fourth respondent also raised same contentions. It was contended that the suit is hit by Order II Rule 2 of CPC. It was also contended that he is a purchaser of the film and he has not done any act which is prejudicial to the interest of the appellant. It was contended that he spent huge amount for the production of film and if injunction is granted he will be put to irreparable injury and loss.

7. Learned District Judge after considering all aspects found that though the appellant established a prima facie case balance of convenience is in favour of the respondents and hence the appellant is not entitled to get an order of injunction. Challenging that order this First Appeal from order is filed.

8. I have heard the learned counsel appearing for the appellant and also

the learned counsel appearing for contesting respondents. Materials on record show that the appellant had in his mind a central theme of story. The subject was about an American returned Psychiatrist by name Joy who uses 'black magic' as a way of treatment. Even before writing the entire story he had sold the same to the first respondent as per agreement dated 28.7.1993. The operative portion of the agreement reads as follows:

“.....I am selling the story and screenplay to Mr.FAZIL, and he will have all the legal right to make, remake or dub this story and screenplay in any languages. I accept Rs.18000/- (Rupees Eighteen thousand only) as my remuneration.”

The entire fate of the case depends upon the interpretation of this document. The specific contention raised by the appellant was that by virtue of agreement dated 28.7.1993 what was given to the first respondent was only a licence to make a Malayalam movie and remaining rights are reserved by the appellant and hence the second respondent did not get any right over the movie. According to him it was a personal right given to the first respondent alone for making a movie in any language which he likes. But he cannot assign or sell the same to any other person. The specific contention raised by all contesting respondents was that it was an out right sale and after Ext.A1 the appellant can have no right over the story or even the theme of the story. They have also raised a contention that this the fourth suit the appellant was filing. It is submitted that the very same appellant had filed a suit against the producer and director when the film was

taken in Tamil and thereafter in Telugu and Kannada. It is also pointed out that in O.S.No.3/2005 which was filed against respondents 1 and 2 the appellant sought for an injunction restraining respondents 1 and 2 and their men from infringing copy right of the appellant in respect of story, screenplay and literary work of Malayalam film Manichithrathazhu and from making, remaking or dubbing the said story in Hindi, Telugu or any other Indian languages or mutilating the story by making cinema, video films, etc. for exhibiting the same in any manner so as to infringe the copyright of the appellant. The petition was dismissed by the trial court. Challenging that order appellant filed F.A.O.No.61/2006 before this Court and that appeal is still pending and in that appeal the interim order passed by this Court was that the respondents shall not show the name of any person other than the appellant as the writer of the story. According to the third and fourth respondents they started production of Hindi movie only on seeing the above order and if an order of injunction is passed at this stage they will be put to heavy loss which cannot be compensated by money.

9. After hearing both sides I am of the considered opinion that the fate of the case depends upon the interpretation of Ext.A1 agreement. If it was an outright sale thereafter the appellant can have no right over the story and even if respondent No.2 onwards are doing something illegal he is not entitled to file any suit and the first respondent alone can take action. On the other hand, as claimed by the appellant if the right assigned under Ext.A1 is a personal right the

appellant is entitled to get relief. But the affidavit filed by respondents 1 and 3 shows that they have already completed the movie and it is awaiting for release and if an injunction is passed at this stage, nobody will be benefited. It is pointed out that in this case there is no claim for any damage. Considering all aspects of the matter I also agree with the view taken by the trial court that balance of convenience is in favour of respondents. Without expressing any opinion regarding the merits of the case this First Appeal from Order is disposed of with a direction to the trial court to consider and dispose of the suit in accordance with law. In case the defendants file a petition to consider any of the issues arising for consideration as a preliminary point that petition shall also be disposed of in accordance with law.

In the result, this First Appeal from Order is disposed of with a direction to the trial court to try and dispose of the suit as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

I.A.No.3226/2007 will stand dismissed.

**K. PADMANABHAN NAIR,
JUDGE.**

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